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TRUSTS—FOREIGN TESTAMENTARY TRUSTEES—LIABILITY TO SUIT.—The plaintiff is the wife of an incompetent and under a decree of separation is entitled to receive alimony. No alimony was paid and the plaintiff obtained a judgment for the amount due. The incompetent has no property of his own, but is the beneficiary of a trust created by the will of his father, probated in Pennsylvania, of which trust the Trust Co. of Philadelphia, and one G, a resident of Pennsylvania, are trustees. The Trust Co. is subject to the jurisdiction of the New York courts by doing business in that state and personal jurisdiction has been obtained over it, but no jurisdiction has been obtained over G. The plaintiff brings this action in the New York court against the trustees and the incompetent to obtain part of the income of the trust fund. *Held*, for the defendants. *Everhart v. Provident Life and Trust Co.* (N. Y. Sup. Ct. Sp. T. 1922) 67 N. Y. L. J. 1843.

It has been held that an action against a resident trustee by a creditor of the *cestui* to obtain part of the income of a trust fund created by a will probated in a foreign state could not be maintained. *Jenkins v. Lester* (1881) 131 Mass. 355. The court failed to distinguish between foreign administrators and executors, and foreign testamentary trustees. An executor is immune from suit in a state other than the one by virtue of whose recognition he holds office. *Helme v. Bucklew* (1920) 229 N. Y. 363, 128 N. E. 216. The law of that state governs his duties and liabilities and no interference by a foreign court should be permitted. See (1911) 11 COLUMBIA LAW REV. 564. A trustee, however, testamentary or otherwise, is subject to duties and liabilities in respect to the trust *res*, not by virtue of his office but by reason of his being vested with the legal title. Equity has rightly issued a decree against a trustee named in a foreign will to execute a trust created by that will where the trustee was a resident of the state. *Jones v. Jones* (1894) 8 Misc. 660, 30 N. Y. Supp. 177. In the instant case, however, only one of the trustees was subject to the jurisdiction of the court and a decree against him would have been of no value. *Hutchinson v. Ayres* (1886) 117 Ill. 558, 7 N. E. 476. But if both trustees were subject to the jurisdiction of the court, there would be no objection to a decree against them for payment of the claim, which decree could be sued on in other jurisdictions as a debt of record. *Tompkins v. Cooper* (1895) 97 Ga. 631, 25 S. E. 247.